90-1930 (1)

SUPREME COURT OF THE UNITED STATES

Term: 1990

NO: _____

OLIVER CURTIS POWELL
Petitioner, Pro Se

v.

BETTY T. ELLISON (POWELL)

FROM NORTH CAROLINA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Mr. Oliver Curtis Powell

130 Powell Road
Rocky Mount, NC 27801

QUESTIONS PRESENTED FOR REVIEW

I. Did the Trial Court violate Plaintiff's Amendment XIV right to Due Process by refusing to allow change of venue to an adjacent county outside the 7th Judicial District pursuant to N.C.G.S. Section 1-84?

EXCEPTION NOS. 7, 18, 19

(Appendix A17, A32, A33)

II. Did North Carolina Courts violate Plaintiff's Amendment XIV right to Due Process by ruling that the debt of this case was settled by the consent order of a prior case when Plaintiff had received no notice that this debt was at issue in the prior case? (Appendix A34)

III. Did North Carolina Court of Appeals violate Plaintiff's Amendment XIV right to Equal Protection of the Law by mis-interpretting or misapplying Williston's Treatise on Contracts to the advantage of Defendant? EXCEPTION NOS. 20, 21 (Appendix A35,)

IV. Did North Carolina Trial Court and Court of Appeals violate Plaintiff's Amendment XIV right to Equal Protection of the Law by ignoring the legal definition of the word "CONTROVERSY" as used in the Consent Order dated 25 November 1987 and by deciding that the debt at issue in this case was in controversy in the prior case? EXCEPTION NO. 21

(Appendix A35, A36)

V. Did the North Carolina judicial system violate Plaintiff's Amendment XIV right to "Equal Protection of the Law by not giving equal consideration and weight to Plaintiff/Appellant's presentations of evidence and arguments as it gave to Defendant/Appellant's presentations? EXCEPTION NO. 22

(Appendix A36, A40, A44)

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United States Constitution, Amend. XIV.

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INTRODUCTION

Petitioner/Plaintiff brought action on January 4, 1988 in North Carolina District Court, Edgecombe County, to recover a debt of $200 for a washer and a drier which Plaintiff sold to wife during separation and prior to divorce. (Appendix A1, A9) Previously, on August 26, 1987 in a separate proceeding Nash County District Court, Judge George M. Britt, presiding, had ordered petitioner to pay $250.00 per month to wife monthly alimony for life, even though Prenuptial Contract stated:

> "... DIVORCE SHALL RELIEVE EACH PARTY OF ALL OBLIGATIONS TO THE OTHER ...."

Further, the trial judge in that case manifested gross bias against petitioner because petitioner was then a Revenue Agent for U.S. Internal Revenue Service. Just prior to issuing his judgement he stated in open court:

"I ASSURE YOU THAT YOU HAVE HAD A MORE FAIR HEARING BEFORE THIS COURT, TODAY, THAN I RECEIVED ON TWO OCCASIONS BEFORE THE INTERNAL REVENUE WHEN MY PERSONAL INCOME TAX RETURNS WERE EXAMINED BY REVENUE AGENTS IN OFFICE AUDIT."

Petitioner gave notice of appeal in that case to North Carolina Court of Appeals but later withdrew the appeal and in a rehearing before Judge L. H. Van Noppen, signed a consent order on November 25, 1987 which stated:

"... ALL MATTERS IN CONTROVERSY HAD BEEN SETTLED ..." and "... DEFENDANT (petitioner) IS TO PAY TO PLAINTIFF (ex-wife) THE SUM OF $10,000.00 IN A FULL AND COMPLETE SETTLEMENT OF ANY CLAIMS THAT PLAINTIFF (ex-wife) HAS AGAINST THE DEFENDANT (petitioner) THAT AROSE OUT OF THE MARRIAGE RELATIONSHIP ..." (Appendix A7)

Several days after the divorce was final and petitioner had paid the $10,000, petitioner asked the ex-wife for payment for the appliances. Ex-wife stated that she would pay for the appliances in a few days but then, about a week later, stated that she had decided

upon advice of her attorney not to pay for the appliances. Although the debt for the sale was incurred in May, 1987 and payment was due, Plaintiff had allowed Defendant additional time to pay for the appliances until such time as she had funds and could afford to pay. (Appendix A9) Plaintiff had no reason to believe Defendant would refuse to pay this just debt when she could afford to do so.

Plaintiff (petitioner) filed suit in Edgecombe County District Court to recover the debt and costs. Petitioner had to file the suit in either Edgecombe County, his residence, or in Nash County, ex-wife's residence. Both counties are in the North Carolina 7th Judicial District and the same District Judges serve the benches of both counties. In that the judge of the previous case had manifested bias during trial and he is

Chief District Judge and supervises the other judges and in that petitioner had raised extensive public complaint about that judge's bias and in that the other judges serve under the Chief District Judge and hold him in high esteem, petitioner requested a change of venue to an adjacent county outside the 7th Judicial District. (Appendix A14)

On July 18, 1988 the Court, Judge Allen W. Harrell presiding, denied a change of venue. (Appendix A16)

On August 15, 1988, upon motion by Defendant, trial court, Judge Allen W. Harrell presiding, issued summary judgement to dismiss the complaint, stating in open court that the prior consent order entered in Nash County District Court, as read:

"... ALL MATTERS IN CONTROVERSY HAD BEEN SETTLED..." included this debt. (Appendix A24) This debt was not men-

tioned during that prior case and was not included in any pleadings of that case.

Plaintiff filed timely notice of appeal (Appendix A25) and submitted a brief to the Court on March 17, 1989. Upon appeal petitioner argued that:
(1) there was no "justiciable dispute" or "justiciable controversy" in regard to the appliances on November 25, 1987 when the consent order was signed;
(2) On November 25, 1987 legal "controversy", as defined by Black's Law Dictionary, did not exist as regards the oral contract to sell the appliances;
(3) Presiding judge should have granted a change of venue to an adjacent county outside the 7th Judicial District.

Defendant/Appellee's attorney, J. Edgar Moore of MOORE, DIEDRICK, CARLISLE & HESTER law firm submitted a letter to the Clerk of North Carolina Court of Appeals which read:

"DEAR MR. DAIL: THE PURPOSE OF THIS LETTER IS TO INFORM YOU THAT I DO NOT PLAN TO FILE A BRIEF ON BEHALF OF THE DEFENDANT APPELLEE, BETTY T. ELLISON (POWELL). I WOULD APPRECIATE YOUR MAKING A NOTE OF THIS FACT IN THE APPROPRIATE FILE."

The North Carolina Court of Appeals did not allow any argument on the appeal. Although Defendant Appellee submitted no brief, the North Carolina Court of Appeals made extensive research to find reasons to rule in favor of the Defendant Appellee. On 7 November 1989 the North Carolina Court of Appeals affirmed the trial court's decision, ruling that:

(a) the "sound discretion" of the trial court was proper in not allowing change of venue;

(b) saying:

"MORE IMPORTANTLY, PLAINTIFF COULD HAVE FILED THIS ACTION IN NASH COUNTY WHERE DEFENDANT RESIDES. G.S. 1-82. YET HE CHOSE TO FILE THIS ACTION IN HIS OWN COUNTY. THAT WAS A DECISION WHICH THE PLAINTIFF WAS ENTITLED TO MAKE. HAVING MADE THAT DECISION, HE HAS NO RIGHT TO CHALLENGE THE COURT'S DENIAL OF HIS MOTION FOR

A CHANGE OF VENUE IN THE ABSENCE OF A SHOWING OF ANY ABUSE."[1]

(c) The terms of the agreement (oral contract) required payment for the appliances at the time of delivery.[2] ;

(d) Williston on Contracts applies to this case as reads:

> "A JUDGEMENT IN AN ACTION ON PART OF A CONTINUING CONTRACT NOT ONLY MERGES THAT RIGHT OF ACTION BUT MAY HAVE THE EFFECT OF CONCLUSIVELY FIXING AN INTERPRETATION OR CONSTRUCTION OF THE CONTRACT FOR ALL FUTURE DISPUTES ... (IF) THE OBLIGATIONS (ARE) BETWEEN THE SAME PARTIES, AND ... THE SAME DEBT OR CLAIM." [3];

(e) The terms of the consent order of November 25, 1987 as read, "all matters

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1. This logic ignores that fact that both Nash and Edgecombe Counties are in the same judicial district and have the same judges.

2. The oral agreement created the debt at the time of delivery; however, petitioner agreed to allow ex-wife pay when she could afford to pay. (Appendix A9)

3. The Court of Appeals ignored the fact that this was not the same debt or claim and that this debt or claim was never mentioned in the prior pleadings.

in controversy had been settled..."

dismissed this debt.

(Appendix A27, et. seq.)

On November 15, 1989 Petitioner filed notice of appeal to North Carolina Supreme Court, saying:

> "PLAINTIFF/APPELLANT, OLIVER CURTIS POWELL, HEREBY GIVES NOTICE OF APPEAL FROM THE DECISON OF THE NORTH CAROLINA COURT OF APPEALS TO THE NORTH CAROLINA SUPREME COURT.
>
> THE DECISON OF THE HONORABLE COURT OF APPEALS IS NOT CONSISTENT WITH THE LEGAL DEFINITION OF "CONTROVERSY" AND DOES NOT CONSIDER THAT BOTH EDGECOMBE COUNTY AND NASH COUNTY ARE IN THE SAME JUDICIAL DISTRICT AND THAT BOTH COUNTIES USE THE SAME JUDGES."

and submitted a "New Brief" to North Carolina Supreme Court on December 5, 1989. In that New Brief, petitioner added the following additional arguments:

(1) Appeals Court did not consider the legal definition of "CONTROVERSY";

(2) Appeals Court misinterpretted and misapplied Williston's Treatise on Contracts;

(3) Trial Courts ignored that petitioner

did not receive "notice" per his Amendment XIV right to "Due Process" because at no time was petitioner ever given notice that the debt of this case was being settled by the agreement of that case;

(4) Trial Court and Appeals Court have denied petitioner "equal Protection of the law" as guaranteed by Amendment XIV by ignoring the arguments and evidence of petitioner because petitioner is proceeding pro se and the position of the Defendant's licensed attorney is given priority;

(5) Even if the consent order signed on November 25, 1987 had cancelled the debt, the debt was renewed by the Defendant's later agreement to pay it;

(6) The terms of the oral agreement did not require payment at the time of delivery and the North Carolina Court of Appeals was in error in finding that it

did:

(7) Appeals Court ignored the fact that both Plaintiff's County and Defendant's County are both in the same Judicial District and therefore change of venue should have been ordered. Amendment XIV "due process" requires fair trial in a fair tribunal.

Defendant/Appellee did not submit a Brief to the North Carolina Supreme Court. On December 11, 1989, her attorney submitted a motion to the North Carolina Supreme Court stating:

> "... DEFENDANT HEREIN MOVES TO DISMISS THE APPEAL TO THE SUPREME COURT OF NORTH CAROLINA FROM THE NORTH CAROLINA COURT OF APPEALS IN THAT THERE IS NO MERIT IN THE APPEAL OF THE PLAINTIFF."

The North Carolina Supreme Court ordered the case dismissed on January 18, 1990 based upon Defendant's motion.

Petitioner gave notice of appeal on January 29, 1990 (Appendix A37) and on

February 4, 1990 amended that notice to stipulate that a petition would be filed to the United States Supreme Court for a Writ of Certiorari. On March 23, 1990, petitioner submitted a motion to U.S. Supreme Court pursuant to 28 U.S.C. 2101(c) to obtain an extension to the time allowed to submit a petition for a Writ of Certiorari. The Honorable Supreme Court of the United States entered Order number A-698 on April 10, 1990 which allows petitioner until May 18, 1990 to file a petition for a Writ of Certiorari. (Appendix A45)

JURISDICTION

This petition to the United States Supreme Court for a Writ of Certiorari is submitted pursuant to 28 U.S.C. 1257(3) and the U.S. Supreme Court has jurisdiction to review this case pursuant to Article III, Section 2, United States Constitution.

STATEMENT OF THE CASE

Plaintiff Appellant Petitioner gave timely notice of appeal on Monday, January 29, 1990 and submitted a motion to the Honorable Supreme Court of the United States on March 23, 1990 pursuant to 28 U.S.C. 2101(c) asking for an extension of time to file a petition for a Writ of Certiorari until June 18, 1990. The Court issued order number A-698 on April 10, 1990 allowing petitioner until May 18, 1990 to file his petition for a Writ of Certiorari. (Appendix A47)

Petitioner asks the Honorable Supreme Court of the United States to review the decisions of the District Court of Edgecombe County, North Carolina which was entered on August 15, 1988, and of the North Carolina Court of Appeals which was entered on 7 November 1989, and of the North Carolina Supreme Court which was entered on January 18, 1990.

Petitioner believes that:

I. Trial Court should have allowed change of venue. North Carolina General Statute, section 1-84 states:

> "REMOVAL FOR A FAIR TRIAL: IN ALL CIVIL ACTIONS IN THE SUPERIOR AND DISTRICT COURTS, WHEN IT IS SUGGESTED ON OATH OR AFFIRMATION ON BEHALF OF THE PLAINTIFF OR DEFENDANT THAT THERE ARE PROBABLE GROUNDS TO BELIEVE THAT A FAIR AND IMPARTIAL TRIAL CANNOT BE OBTAINED IN THE COUNTY IN WHICH THE ACTION IS PENDING, THE JUDGE MAY ORDER A COPY OF THE RECORD OF THE ACTION REMOVED FOR TRIAL TO AN ADJACENT COUNTY, IF HE IS OF THE OPINION THAT A FAIR TRIAL CANNOT BE HAD IN SAID COUNTY, AFTER HEARING ALL THE TESTIMONY OFFERED ON EITHER SIDE BY ORAL EVIDENCE OR AFFIDAVITS."

Plaintiff submitted a affidavit stating that he did not believe he could have a fair hearing before the judges of District 7, testified in Court to the same belief and asked that the proceedings be moved to an adjacent county outside the 7th Judicial District. (Appendix A14)

Petitioner believes that failure to

move the proceedings to an adjacent county outside the 7th Judicial District violated his Amendment XIV rights to Due Process of Law. This question was first raised before the North Carolina Court of Appeals.[4]

II. Trial Court judge stated in open court that the debt being litigated in this case was settled by the consent order which read: "... all matters in controversy had been settled..." and the North Carolina Court of Appeals concurred.

Petitioner believes that this judgement violates Plaintiff's right to Due Process because he was never given notice that this debt was at issue in the prior case. This debt was never mentioned in any pleading or argument before that

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4. Hobson v. Hansen 265 F Supp 902 (1967)
Tumey v. State of Ohio 47 S. Ct. 437, 444
Offuttt v. United States 75 S. Ct. 11, 13
McClendon v. Clinard 38 NC App 353

prior court. Amendment XIV, United States Constitution states:

> "... NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; ...."

U. S. Courts have held that "due process" includes a fair trial before a fair tribunal and has said that such a stringent rule may sometimes bar trial by judges who have no actual bias and who do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way "justice must satisfy the appearance of justice." 75 S. Ct. 11, 13.

This question was first raised before the North Carolina Court of Appeals and was presented as a U.S. Constitution right in Plaintiff's appeal to North Carolina Supreme Court.

III. North Carolina Court of Appeals misinterpretted or misapplied Williston's

treatise on Contracts to the advantage of Defendant. The section quoted by the Court of Appeals from Williston reads:

> "A JUDGEMENT IN AN ACTION ON PART OF A CONTINUING CONTRACT NOT ONLY MERGES THAT RIGHT OF ACTION BUT MAY HAVE THE EFFECT OF CONCLUSIVELY FIXING AN INTERPRETATION OR CONSTRUCTION OF THE CONTRACT FOR ALL FUTURE DISPUTES ... (IF) THE OBLIGATIONS (ARE) ... THE SAME DEBT OR CLAIM."

The debt here in litigation is not of "a continuing contract" and does not involve the "same debt or claim".

Williston's treatise is not a law; however, a Court decision based upon Williston's view will become case-law if not overturned by higher Court. As applied in this case, the treatise has been applied improperly and if left standing in the context used, this precedence could be used unfairly in future cases . Further, misinterpretting or misapplying Williston to the advantage of the Defendant violates Plaintiff's

Amendment XIV rights under the United States Constitution as reads:

> "NO STATE SHALL ... DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS."

The question of whether Williston on Contracts was being properly interpretted and applied was first presented to the North Carolina Supreme Court but that Court dismissed the appeal without considering it.

The Question of whether the misinterpretation or misapplication of Williston on Contracts violates petitioner's civil rights under Amendment XIV is first raised before the United States Supreme Court.

IV. Trial Court and North Carolina Court of Appeals ignored the legal definition of "CONTROVERSY" as used in the consent order dated 25 November 1987. The Courts did misinterpret "controversy" in such a manner as to give unfair ad

vantage to the Defendant. BLACK'S LAW DICTIONARY defines "CONTROVERSY" as:

> "A LITIGATED QUESTION; ADVERSARY PROCEEDING IN A COURT OF LAW; A CIVIL ACTION OR SUIT, EITHER AT LAW OR IN EQUITY; A JUSTICIABLE DISPUTE. TO BE A 'CONTROVERSY' UNDER FEDERAL CONSTITUTIONAL PROVISION LIMITING EXERCISE OF JUDICIAL POWER OF THE UNITED STATES TO CASES AND CONTROVERSIES THERE MUST BE A CONCRETE CASE ADMITTING OF AN IMMEDIATE AND DEFINITIVE DETERMINATION OF LEGAL RIGHTS OF PARTIES IN AN ADVERSARY PROCEEDING UPON FACTS ALLEGED, AND CLAIMS BASED MERELY UPON ASSUMED POTENTIAL INVASIONS OF RIGHTS ARE NOT ENOUGH TO WARRANT JUDICIAL INTERVENTION. SOUTHERN RAILWAY CO. V. BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, D.C. GA, 223 F. SUPP. 296, 303. THIS TERM IS IMPORTANT IN THAT JUDICIAL POWER OF THE COURTS EXTENDS ONLY TO CASES AND 'CONTROVERSIES.' SEE CASE; CAUSE OF ACTION; JUSTICIABLE CONTROVERSY."

The question about the debt which Defendant had orally agreed to pay to Plaintiff for the household appliances was not a part of any of the allegations, pleadings, arguments, or the judgement and order in the Nash County case. Defendant did not disagree over the debt or state that she would not pay the debt

until after the previous case was settled. That case was settled on November 25, 1987; afterwards on or about December, 1987, Defendant orally re-affirmed her intention to pay this debt.

For the Trial Court and North Carolina Court of Appeals to misinterpret the term "controversy" so as to include the debt not in dispute in the prior consent order gives unfair advantage to Defendant, is an injustice to Plaintiff and violates Plaintiff's Amendment XIV rights under the U.S. Constitution as reads:

> "NO STATE SHALL ... DENY TO ANY PERSON WITHIN IT JURISDICTION THE EQUAL PROTECTION OF THE LAWS."

The question of whether the Court was properly interpretting "CONTROVERSY" was first raised at trial court. The question as to whether interpretation of the term "CONTROVERSY" to the Defendant's advantange violates petitioner's rights

under Amendment XIV is first raised before the United States Supreme Court.

V. Trial Court ignored Plaintiff's arguments and gave more attention to the arguments of the Defendant. The North Carolina Court of Appeals made extensive research to find and misapply Williston's treatise on Contracts in favor of the Defendant. Defendant did not even submit a brief or make any argument in defense. The Court of Appeals did not allow Plaintiff Appellant to argue the case. If Plaintiff had not submitted a brief, the Court of Appeals would have considered all of Plaintiff's questions for the Court abandoned and would have dismissed the appeal. Rule 28 of North Carolina Rules of Appellate Procedure states:

> "... . EXCEPTIONS NOT SET OUT IN THE APPELLANT'S BRIEF, OR IN SUPPORT OF WHICH NO REASON OR ARGUMENT IS STATED OR AUTHORITY CITED, WILL BE TAKEN AS ABANDONED. ...."

For the North Carolina Court of

Appeals to require Plaintiff Appellant to research the issues and submit a brief and then, after Defendant-Appellee submitted no brief and made no defense, to allow the Court of Appeals to research information to support the Defendant-Appellee's position violates Plaintiff-Appellant's civil rights under Amendment XIV, U.S.Constitution as reads:

> "NO STATE SHALL ... DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS."

Circumstances suggests that the North Carolina Courts hold to place less importance to the position of an individual proceeding in the judicial system "pro se" than they place upon the position of a licensed attorney. Our United States Constitution requires equal protection of the law for all persons, not just for those represented by licensed attorneys.

The question as to whether the North

Carolina Courts have ignored Plaintiff-Appellant-Petitioner's evidence and arguments in favor of the position of Defendant's licensed attorney and whether having done so violates petitioner's rights under Amendment XIV, U.S. Constitution was first raised before the North Carolina Supreme Court. However, the North Carolina Supreme Court dismissed the appeal and did not consider this question.

ARGUMENTS

I. THE TRIAL COURT VIOLATED PLAINTIFF'S AMENDMENT XIV RIGHT TO "DUE PROCESS" BY REFUSING TO ALLOW CHANGE OF VENUE TO AN ADJACENT COUNTY OUTSIDE THE 7TH JUDICIAL DISTRICT PURSUANT TO NORTH CAROLINA GENERAL STATUTE, SECTION 1-84.

EXCEPTION NOS. 7, 18
(Appendix A17, A32, A41)

Trial Judge, Allen W. Harrell, is subordinate to Chief District Judge, George M. Britt, and Judge Britt manifested bias toward Plaintiff-Appellant during another case in 1987.

During that trial it was revealed that Plaintiff was then employed as a Revenue Agent with the U.S. Internal Revenue Service. Just prior to rendering judgement, Chief District Judge Britt stated in open court:

> "I ASSURE YOU THAT YOU HAD A MORE FAIR HEARING BEFORE THIS COURT THAT I HAD ON TWO OCCASIONS WHEN MY PERSONAL INCOME TAX RETURNS WERE EXAMINED IN OFFICE AUDIT BY REVENUE AGENTS."

That statement in its context verified that Judge Britt was biased and that he believed that Plaintiff would treat him wrongly if Plaintiff were auditing his tax return. In his supervising capacity, Judge Britt has influence upon his subordinate judges and, consciously or unconsciously, he does influence their decisions. It is normal habit for subordinates to hold their superiors in high esteem.

For whatever reason, it is obvious

that Judge Harrell allowed bias to influence his decisions in this case. He ignored Plaintiff's arguments and gave little attention to the legal definition of "CONTROVERSY" and he unfairly and improperly ordered this case dismissed.

From the bench, Judge Harrell stated in response to Plaintiff's request for change of venue:

> "THAT'S ECONOMICALLY UNFEASIBLE, TO RUN ALL OVER THE STATE, AT YOUR ELECTION, TO HEAR SOMETHING, ACCORDING TO WHAT I'VE HEARD, YOU'RE SUING OVER A $200.00 DEAL IN THE FIRST PLACE."
> (From trial transcript)

Obviously, the presiding judge was biased that Plaintiff should not have brought this issue into court. If the public has come to believe that this is the attitude in the judicial system, it is little wonder that so many individuals take matters into their own hands to settle them with violence instead of seeking settlement judicially.

When Plaintiff asked in Court for

permission to respond to the Judge's com ment about the $200.00 debt, the Judge refused to allow Plaintiff to respond.

North Carolina General Statute, Section 1-84 provides for the presiding judge to remove the case to an adjacent county if a litigant affirms his belief that a fair and impartial hearing will not be available in the assigned court. Further, Canon 3 of the North Carolina CODE OF JUDICIAL CONDUCT, paragraph C(1) states:

> "A JUDGE SHOULD DISQUALIFY HIMSELF IN A PROCEEDING IN WHICH HIS IMPARTIALITY MIGHT REASONABLY BE QUESTIONED .... "

Our Federal Courts have said:

> "A FAIR TRIAL IN A FAIR TRIBUNAL IS A BASIC REQUIREMENT OF DUE PROCESS. FAIRNESS OF COURSE REQUIRES AN ABSENCE OF ACTUAL BIAS IN A TRIAL OF CASES. BUT OUR SYSTEM HAS ALWAYS ENDEAVORED TO PREVENT EVEN THE PROBABILITY OF UNFAIRNESS. TO THIS END NO MAN CAN BE A JUDGE IN HIS OWN CASE AND NO MAN IS PERMITTED TO TRY CASES WHERE HE HAS AN INTEREST IN THE OUTCOME. THAT INTER-EST CANNOT BE DEFINED WITH PRECISION. CIRCUMSTANCES AND RELATIONSHIPS MUST BE CONSIDERED. THIS COURT HAS SAID,

HOWEVER, THAT 'EVERY PROCEDURE WHICH WOULD OFFER A POSSIBLE TEMPTATION TO THE AVERAGE MAN AS A JUDGE * * * NOT TO HOLD THE BALANCE NICE, CLEAR, AND TRUE BETWEEN THE STATE AND THE ACCUSED DENIES THE LATER DUE PROCESS OF LAW." TUMEY V. STATE OF OHIO, 273 US 510, 532, 47 S CT 437, 444; HOBSON V. HANSEN 265 F. SUPP. 902 (1967)."

"SUCH A STRINGENT RULE MAY SOMETIMES BAR TRIAL BY JUDGES WHO HAVE NO ACTUAL BIAS AND WHO WOULD DO THEIR VERY BEST TO WEIGH THE SCALES OF JUSTICE EQUALLY BETWEEN CONTENDING PARTIES. BUT TO PERFORM ITS HIGH FUNCTION IN THE BEST WAY 'JUSTICE MUST SATISFY THE APPEARANCE OF JUSTICE.'" OFFUTT V. UNITED STATES 348 US 11, 14; 75 S CT 11, 13.

The primary consideration is for all litigants to have confidence in the fairness and impartiality of the judicial process. The presiding judge could not make an impartial decision as to his own qualifications to hear this case. This fact is well inferred from the presiding judge's comments in court; especially in his remarks about "... YOU'RE SUING OVER A $200.00 DEAL IN THE FIRST PLACE."

Further, the presiding judge could not be impartial in a decision as to

whether he, himself, might be biased.

Our North Carolina Court of Appeals has said:

> "THE TRIAL JUDGE COMMITTED ERROR BY NOT DISQUALIFYING HIMSELF FROM CONSIDERING A MOTION TO RECUSE HIMSELf FROM HEARING THE PLAINTIFF'S MOTION TO SET ASIDE A JUDGEMENT ON GROUNDS OF EXCUSABLE NEGLECT. SINCE A REASONABLE MAN KNOWING ALL THE CIRCUMSTANCES WOULD HAVE DOUBTS ABOUT THE JUDGE'S ABILITY TO RULE ON A MOTION TO RECUSE IN AN IMPARTIAL MANNER."
> MCCLENDON V. CLINARD, 38 NC APP 353, 247 SE 2d 783"

II. NORTH CAROLINA COURTS VIOLATED PLAINTIFF'S AMENDMENT XIV RIGHT TO DUE PROCESS BY RULING THAT THE DEBT OF THIS CASE WAS SETTLED BY THE CONSENT ORDER OF A PRIOR CASE WHEN PLAINTIFF HAD RECEIVED NO NOTICE THAT THIS DEBT WAS AT ISSUE IN THAT CASE.

This issue was presented to North Carolina Supreme Court in "New Brief" filed on December 5, 1989.

Presiding judge of this case stated in open court:

> "... THE PLAINTIFF, THE DEFENDANT, AND THE ATTORNEY STATED IN OPEN COURT THAT ALL MATTERS IN CONTROVERSY HAD BEEN SETTLED SO THEY DESIRED THE COURT TO ENTER AN ORDER ON THAT BASIS. NOW, INSOFAR AS THE WAY THE LAW LOOKED AT IT, AND THE WAY THE JUDGE LOOKED AT IT

WHO WAS HEARING IT AT THAT TIME, ANY KIND OF PROBLEM, ANY KIND OF CLAIM YOU ALL, EITHER OF YOU HAD AGAINST THE OTHER WAS BEING TERMINATED, WRAPPED UP IN THAT ONE LITTLE BITTY PACKAGE, AND DONE AWAY WITH."

However, in none of the pleadings of that case was there any mention about the debt the ex-wife owed to ex-husband for the washer and drier on oral contract. At that time, petitioner had no doubt that the debt would be settled as soon as the ex-wife had financial resources to pay it. Plaintiff had allowed Defendant time until she had the financial resources available and could afford to pay for the appliances. (Appendix A9) This debt was not mentioned at all during that litigation. Approximately one week after that case was settled and the Consent Order was signed, the ex-wife stated that she would pay for the appliances in a few days. Even if the consent order had discharged the debt, her oral agreement to pay the debt

reaffirmed the obligation.

Most importantly, petitioner did not have notice that this debt was at issue in that case. Amendment XIV states:

> "... NO STATE SHALL ... DEPRIVE ANY PERSON OF ... PROPERTY WITHOUT DUE PROCESS OF LAW...."

Courts have consistently held that "DUE PROCESS" means that one must receive notice:

> "ESSENTIAL ELEMENT OF 'DUE PROCESS' IS THAT NO ADJUDICATION IS VALID AGAINST PERSON OR PROPERTY WITHOUT NOTICE AND HEARING."
> PEOPLE V. MILLER, 339 Ill. 573

> "'NOTICE' IS A CONSTITUTIONAL REQUIREMENT OF 'DUE PROCESS' WHICH INCLUDES REGULAR ALLEGATIONS, OPPORTUNITY TO ANSWER, AND TRIAL ACCORDING TO SOME SETTLED COURSE OF PROCEDURE."
> HOLLIS V. TILTON. 90 N.H. 119

Nowhere in the allegations or proceedings of the Nash County case 86 CVD 981 was petitioner given notice that the debt for the appliances was being settled in that court. No allegations were made that the debt was in

default or that the debt should be a part of any settlement. In that demand for payment had not been made, the debt was not in default. In that the ex-wife had not communicated any intention not to pay the debt, petitioner had no reason to believe that Appellee might refuse to pay the debt at a later date.

III. NORTH CAROLINA COURT OF APPEALS VIOLATED PLAINTIFF-APPELLANT'S AMENDMENT XIV RIGHT TO EQUAL PROTECTION OF THE LAW BY MISINTERPRETTING OR MISAPPLYING WILLISTON'S TREATISE ON CONTRACTS TO THE ADVANTAGE OF DEFENDANT-APPELLEE.

EXCEPTIONS 20, 21
(Appendix A35,)

North Carolina Court of Appeals affirmed the Trial Court's decision to dismiss this case and justified their decision, primarily upon a quotation from Williston on Contracts:

> "A JUDGEMENT IN AN ACTION ON PART OF A **CONTINUING CONTRACT** NOT ONLY MERGES THAT RIGHT OF ACTION BUT MAY HAVE THE EFFECT OF CONCLUSIVELY FIXING AN INTERPRETATION OR CONSTRUCTION OF THE CONTRACT FOR ALL FUTURE DISPUTES ... (IF) THE OBLIGATIONS (ARE) ... **THE SAME DEBT OR CLAIM.**"
> (emphasis added by appellant)

The issue in litigation is not "a (one) continuing contract". The oral contract regarding the appliances is a separate contract from the issues which were before the Nash County Court in November 1987. Nowhere in those proceedings was the oral contract about the appliances mentioned.

The debt for the appliances was not "the same debt or claim" as the claim which appellee had before the Court in November 1987. Footnotes in Williston on Contracts give more meaning to the treatise:

> "A SUBSEQUENT JUDGMENT WILL NOT MERGE THE EARLIER IF THE CREDITOR NEEDS THE PROTECTION OF BOTH." WOLFORD V. SCARBROUGH 224 MO APP 137"
>
> "THE ASSIGNEE'S FAILURE TO USE DUE DILLIGENCE IN THE PROSECUTION OF HIS JUDGEMENT AGAINST THE MAKER UPON THE NOTES THEN DUE, IS NO DEFENCE IN THE SUIT AGAINST THE ASSIGNOR UPON NOTES WHICH AFTERWARDS BECAME DUE." WILLSON V. BINFORD. 81 IND 588

In that the debt for the appliances

was not before the Nash County Court in November 1987, they are not the same debt. There was no cause of action to bring this debt before that Court because the ex-wife had not at anytime indicated that she might not pay the debt. The fact that the issues then before that Court were settled by the Consent Order is no defense against a later claim for this debt which was not then before the court.

The Consent Order stated:

> "IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED THAT THE DEFENDANT (plaintiff-appellant in this case) IS TO PAY TO PLAINTIFF (defendant-appellee) THE SUM OF $10,000.00 IN A FULL AND COMPLETE SETTLEMENT OF ANY CLAIMS THAT THE PLAINTIFF (defendant-appellee) HAS AGAINST THE DEFENDANT (plaintiff-appellant) THAT AROSE OUT OF THE MARRIAGE RELATIONSHIP ...."

No wording of the Consent Order discharged any claims which Plaintiff-Appellant might then or later have against the Defendant-Appellee.

IV. TRIAL COURT AND NORTH CAROLINA COURT OF APPEALS VIOLATED PLAINTIFF'S AMENDMENT XIV RIGHT TO EQUAL PROTECTION OF THE LAW BY IGNORING THE LEGAL DEFINITION OF THE WORD, "CONTROVERSY", AS USED IN THE CONSENT ORDER DATED 25 NOVEMBER 1987 AND BY DECIDING THAT THE DEBT AT ISSUE IN THIS CASE WAS IN CONTROVERSY IN THE PRIOR CASE.

EXCEPTION 21 (Appendix A35, A36)

Trial Court and North Carolina Court of Appeals ignored the legal definition of "CONTROVERSY". Even Webster Dictionary defines "controversy as:

> "1. A DISCUSSION MARKED ESP. BY THE EXPRESSION OF OPPOSING VIEWS: DISPUTE. 2. QUARREL OR STRIFE."

There was no opposing view, dispute, quarrel or strife over the debt now at issue until more than one week after the Plaintiff and Defendant had signed the consent order of November 25, 1987. In fact, Defendant stated on or about December 1, 1987 that she would pay the debt in a few days. Only after her attorney instructed her not to pay the debt did she refuse to pay the debt -

only then was there "controversy".

Black's Law Dictionary defines

"CONTROVERSY" as:

> "A LITIGATED QUESTION; ADVERSARY PROCEEDING IN A COURT OF LAW; A CIVIL ACTION OR SUIT, EITHER AT LAW OR IN EQUITY; A JUSTICIABLE DISPUTE. TO BE A 'CONTROVERSY' UNDER FEDERAL CONSTITUTIONAL PROVISION LIMITING EXERCISE OF JUDICIAL POWER OF UNITED STATES TO CASES AND CONTROVERIES THERE MUST BE A CONCRETE CASE ADMITTING OF AN IMMEDIATE AND DEFINITIVE DETERMINATION OF LEGAL RIGHTS OF PARTIES IN AN ADVERSARY PROCEEDING UPON FACTS ALLEGED, AND CLAIMS BASED MERELY UPON ASSUMED POTENTIAL INVASIONS OF RIGHTS ARE NOT ENOUGH TO WARRANT JUDICIAL INTERVENTION. SOUTHERN RY. CO. V. BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, D.C. GA., 223 F. SUPP. 296, 303. THIS TERM IS IMPORTANT IN THAT JUDICIAL POWER OF THE COURTS EXTENDS ONLY TO CASES AND "CONTROVERSIES." SEE CASE; CAUSE OF ACTION; JUSTICIABLE CONTROVERSY."

Black's Law Dictionary defines

"JUSTICIABLE CONTROVERSY" as:

> "A CONTROVERSY IN WHICH A CLAIM OF RIGHT IS ASSERTED AGAINST ONE WHO HAS AN INTEREST IN CONTESTING IT. A QUESTION AS MAY PROPERLY COME BEFORE A TRIBUNAL FOR DECISION. DUART MFG CO. V. PHILAD CO., D.C. DEL., 30 F. SUPP. 777, 779, 780. COURTS WILL ONLY CONSIDER A 'JUSTICIABLE' CONTROVERSY, AS DISTINGUISHED FROM A HYPOTHETICAL DIFFERENCE OR DISPUTE OR ONE THAT IS

ACADEMIC OR MOOT. AETNA LIFE INS. CO. V. HAWORTH, 300 U.S. 227, 239, 57 S. CT. 461, 463, 81 L. ED. 617. TERM REFERS TO REAL AND SUBSTANTIAL CONTROVERSY WHICH IS APPROPRIATE FOR JUDICIAL DETERMINATION, AS DISTINGUISHED FROM DISPUTE OR DIFFERENCE OF CONTINGENT, HYPOTHETICAL OR ABSTRACT CHARACTER. GUIMARIN & DOAN, INC. V. GEORGETOWN TEXTILE & MFG CO. 249 S.C. 561, 155 S.E. 2D 618, 621. SEE CASE."

Even if Appellant-petitioner had suspected that ex-wife might later refuse to pay her just debt, there would not be a "controversy" or justiciable dispute because a hypothetical difference or dispute is not justiciable. Black's Law Dictionary defines "JUSTICIABLE" as:

"MATTER APPROPRIATE FOR COURT REVIEW."

In 1925 North Carolina law allowed the North Carolina Courts to hear cases involving "controversy without action under C.S. 626. The N.C. Supreme Court said that the essentials of a "controversy without action" proceeding were:

"1. THE EXISTENCE OF A 'QUESTION OF

DIFFERENCE'.

2. THE EXISTENCE OF AN ADVERSE CLAIM.

3. THE PROCEEDING MUST BE BROUGHT IN GOOD FAITH.

FINEY V. CORBETT. 193 NC 315"

On November 25, 1987 there was not a "question of difference and no adverse claim existed in regard to the debt now in litigation. The North Carolina Supreme Court's essential elements of "controversy" were missing in the Consent Order as regards to the debt now at issue.

The Trial Court, the North Carolina Court of Appeals, and the North Carolina Supreme Court have ignored Plaintiff-Appellant's arguments and have not properly applied the law in the context of the legal definition of "CONTROVERSY.

Defining the legal term, "CONTROVERSY" as used in the Consent Order which the parties signed on November 25, 1987 in such a manner as to give unfair advantage to Defendant-Appellee

constitutes a violation of Plaintiff-Appellant's Amendment XIV rights under the U.S. Constitution as reads:

> "NO STATE SHALL ... DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS."

V. NORTH CAROLINA JUDICIAL SYSTEM VIOLATED PLAINTIFF-APPELLANT'S AMENDMENT XIV RIGHT TO "EQUAL PROTECTION OF THE LAW" BY NOT GIVING EQUAL CONSIDERATION AND WEIGHT TO PLAINTIFF-APPELLANT'S PRESENTATIONS OF EVIDENCE AND ARGUMENTS AS IT GAVE TO THOSE PRESENTED BY DEFENDANT-APPELLEE'S ATTORNEY. EXCEPTION 22
(Appendix A36, A40, A44)

The Trial Court and the North Carolina Court of Appeals completely ignored the legal definition of "CONTROVERSY" so as to give unfair advantage to Defendant-Appellee. The Court of Appeals did not even consider Appellant's argument that the North Carolina Supreme Court had already defined "controversy" in 1925 in Finey v. Corbett. SEE ARGUMENT IV ABOVE.

Although Defendant-Appellee did not submit a "brief" and presented no argu-

ment, the North Carolina Court of Appeals unfairly disregarded Plaintiff-Appellant's evidence and arguments and ruled in favor of the Appellee. To do so, the Court of Appeals made its own research in an effort to find justification to rule in favor of the Appellee.

The Court of Appeals quoted from Williston on Contracts and misinterpretted or misapplied Williston in such a manner that the Court could affirm the decision of the trial court to dismiss the Plaintiff's case.
SEE ARGUMENT III ABOVE.

The Court of Appeals disregarded the fact that both Edgecombe and Nash Counties are in the same 7th Judicial District and have the same judges on their Court benches. The Court of Appeals stated that Plaintiff could have filed the suit in the Defendant's residence county and therefore had no

right to ask for a change of venue to remove the case to an adjacent county. Plaintiff had asked that the case be removed to an adjacent county in another Judicial District. In order to affirm the Trial Court's decision in favor of the Defendant-Appellee, who was represented by a licensed attorney, the N. C. Court of Appeals disregarded facts which they should have known or determined about the North Carolina Court structure, even though that attorney made no defense on appeal. SEE ARGUMENT I ABOVE.

Trial Court and Court of Appeals ignored the fact that Defendant-Appellant renewed her obligation to pay her just debt by stating after the Consent Order was signed that she would pay Plaintiff. She later reversed her decision upon advice of her attorney.

Court of Appeals determined that the debt was in default immediately upon

delivery of the appliances, even though Plaintiff-Appellant stated that he had not demanded payment and had agreed to allow Defendant-Appellee time to pay for the appliances when she could afford to do so. Taking this position allowed the Court of Appeals to rule that the debt was outstanding during the previous proceeding and that it should have been at issue before the Consent Order was signed. This improper determination without supporting evidence gave unfair advantage to Defendant-Appellee.

All proceedings in perspective, it is obvious that the North Carolina judicial system proceeded in such a manner as to unfairly deny Plaintiff-Appellant his Constitutional right to "equal protection of the law".

CONCLUSION

Petitioner respectfully asks that the Honorable Supreme Court of the United

States accept this appeal on a Writ of Certiorari for the reasons given above.

Respectfully submitted on this 18 day of May, 1990.

Oliver Curtis Powell

OLIVER CURTIS POWELL, Pro Se
130 Powell Road
Rocky Mount, N.C. 27801
(919) 977-6775

* * * * * * * * * * * * * * *

CERTIFICATE OF SERVICE

I certify that Plaintiff-Appellant's PETITION FOR WRIT OF CERTIORARI with appendix was served upon Defendant-Appellee by hand delivering three (3) copies of each to her attorney of record, J. Edgar Moore of MOORE, DIEDRICK, CARLISLE AND HESTER at 512 West Thomas Street, Rocky Mount, N.C. and leaving them with a respionsible employee on this 18 day of May, 1990.

Oliver Curtis Powell
OLIVER CURTIS POWELL

APPENDIX

INDEX TO APPENDIX

COMPLAINT AND DEMAND FOR JURY TRIAL
(Filed JAN 4 11:57 AM 1987)

Now comes the Plaintiff, complaining of the Defendant and alleging that:

JURISDICTION

1. The Plaintiff is a resident of the State of North Carolina and lives in Edgecombe County and has for more than one year prior to initiating this action.

2. The Defendant is a resident of Nash County and lives at 804 Dale Street, Sharpsburg, N.C.

FACTS

3. On or about July 7, 1986 the Plaintiff purchased an automatic clothes washer and a clothes drier from the defendant for $200.00 cash with the agreement that if the Defendant ever wanted them back the Plaintiff would sell the appliances back to her at the same price.

4. On or about May 1, 1987 the Defendant called the Plaintiff at his home and asked to buy the appliances back. As agreed, the Plaintiff delivered the appliances to the Defendant's residence at her current address; however, the Defendant has not paid the Plaintiff for the appliances as agreed. The Plaintiff has demanded payment but the Defendant now states that the washer malfunctioned after she received it and now refuses to pay for the appliances as agreed.

CAUSE OF ACTION

5. The Plaintiff purchased the appliances from the Defendant as-is/where-is, without any warantee or promise of reliability and the Plaintiff sold the appliances back to her under the same terms - without warantee.

6. Plaintiff has demanded payment but Defendant refuses to make payment.

Payment was due upon delivery and failure to pay is a breach-of-contract. Intent not to pay for the appliances after receiving delivery constitutes fraud.

PLEADING

WHEREFORE, the Plaintiff requests trial by jury and prays to this Honorable Court to:

1. Order the Defendant to pay the $200.00 amount for the appliances as agreed.

2. Order the Defendant to pay interest at the maximum legal rate from May 1, 1987 which is the approximate date that the appliances were delivered to her.

3. Order the Defendant to pay to Plaintiff the sum of $500.00 in punitive damages for her attempt at fraud.

4. Order the Defendant to pay the costs and expenses of this action.

5. Enter such other order as the

Court finds just and proper.

THIS, the 4 day of January, 1988.

s/ OLIVER CURTIS POWELL
Oliver Curtis Powell

(Verified by Oliver Curtis Powell
this, the 4 day of January, 1988.

ANSWER

The defendant answering the complaint of the plaintiff alleges and says:

FIRST DEFENSE

The complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

On November 25, 1987 the plaintiff and defendant entered into a consent order which operates as a full and complete settlement of any claims between them and accordingly any claim of the plaintiff against the defendant has been fully satisfied; and further, that the consent order operates as a release signed by the defendant from the claim

alleged in the complaint. A copy of the order is attached and incorporated herein by reference as if fully set out.

THIRD DEFENSE

1. Paragraphs one and two of the complaint are admitted.

2. Paragraphs three, four, five and six are denied.

COUNTERCLAIM

1. The claim filed by the plaintiff has no merit, is frivolous, and is filed for the purpose of harassing the defendant.

2. The defendant has been unduly forced to incur expenses in the defense of this action, including attorney's fees, and the plaintiff should be required to pay reasonable attorney's fees.

3. J. Edgar Moore, of Moore, Diedrick, Carlisle & Hester has performed necessary and valuable services for the

defendant, including preparation and filing of this answer.

WHEREFORE the defendant prays the Court:

1. To dismiss this action.

2. That the plaintiff be required to pay all court costs and expenses.

3. That the plaintiff be required to pay a reasonable attorney's fee.

This the (illegible) day of February, 1988.

MOORE, DIEDRICK, CARLISLE & HESTER
By: s/ (Illegible)
Attorney for Defendant

Attached ORDER

This cause coming on to be heard and being heard before the undersigned Judge Presiding at the November 25, 1987 special session of District Court held in Nash County, Nashville, North Carolina; and the plaintiff was present in Court and represented by J. Edgar Moore, Attor-

ney at Law, and the defendant was present in Court representing himself;

That the plaintiff, the defendant, and attorney for the plaintiff stated in open Court that all matters in controversy had been settled and that they desired the Court to enter an Order on this date;

It is, therefore, ORDERED, ADJUDGED AND DECREED that the defendant is to pay to the plaintiff the sum of $10,000.00 in full and complete settlement of any claims that the plaintiff has against the defendant that arose out of the marriage relationship, with $5,000.00 to be paid on or before November 30, 1987 and $5,000.00 to be paid on or before May 30, 1988, without interest.

It is further Ordered that the defendant is to pay to plaintiff's attorney, J. Edgar Moore, the sum of $1000.00 in legal fees, representing all legal

fees due from the defendant to plaintiff's attorney through this date, said payments to be made: $500.00 on or before November 30, 1987 and $500.00 on or before May 30, 1988.

It is Further Ordered that the appeal pending in this case is withdrawn by the defendant.

It is Further Ordered that this cause is retained for further orders of the Court for the purpose of requiring payments under this Order.

This cause is to be enforced as for contempt this the 25th day of November, 1987.

s/ L. H. VAN NOPPEN
Judge Presiding

We consent to the entry of this Order:

s/ BETTY G. POWELL
Plaintiff

s/ OLIVER CURTIS POWELL
Defendant

s/ J. EDGAR MOORE
Attorney for Plaintiff

REPLY
(Filed Feb 29 1:31 PM 1988)

The Plaintiff, in reply to Counter-Claim says:

1. The claim is not frivolous. Defendant, Betty T. Ellison (Powell) contracted by verbal agreement to pay Plaintiff, Oliver Curtis Powell the amount of $200 for washer and drier and the appliances were faithfully and promptly delivered to her in the understanding that she would pay for them as soon as she could afford to do so. Plaintiff, Oliver Curtis Powell (Defendant in Court order of case 86CVD981, dated 25 November 1987) did not release claim to payment for the two appliances. This matter was not in controversy before that court because demand for payment had not been made and there was no reason to believe that Betty T. Ellison (Powell) would

violate her word of honor to pay as agreed. Betty T. Ellison (Powell), Plaintiff in that case, accepted lump-sum payment "in a full and complete settlement of any claims that the Plaintiff (Betty T. Powell) has against the Defendant ..." Nowhere in that order does the Plaintiff of this case (Defendant in that case) release full and complete settlement.

2. Defendant, Betty T. Ellison, was not unduly forced to incur any legal expenses in defense of this action. she could and should have properly settled her just and honest debt of only $200 in an honorable manner. Instead, she has chosen to antagonize and harass Plaintiff, Oliver Curtis Powell, by refusing to pay her just debt and by forcing him to place this matter into Court litigation for settlement.

3. J. Edgar Moore of Moore,

Diedrick. Carlisle and Hester has improperly and unscrupulously advised Defendant. Betty T. Ellison. not to pay her just debt in an obvious attempt to antagonize the parties into further litigation so he can derive more revenue for "services" which would otherwise be avoided.

4. If Defendant. Betty T. Ellison. and her attorney are not willing to settle this matter honorably and properly. Plaintiff requests JURY TRIAL with full Court transcription.

THIS. 29 day of February. 1988.

s/ OLIVER CURTIS POWELL
Oliver Curti Powell

(Sworn this 29 day of February. 1988.)

MOTION FOR INJUNCTION
Rule 7(b) N.C. Rules of Civil Proc.
(Filed May 16 8:46 AM 1988)

1. During the past several months numerous telephone calls have been received by the Plaintiff in which whom-

ever initiated the calls would not speak when Plaintiff answered the phone. On or about March 25. 1988 a person call Plaintiff's residence and stated into Plaintiff's telephone answer machine, quote: "CURTIS, YOU ASS-HOLE", unquote and immediately hung up. Plaintiff recognized the female voice as being that of Defendant. Further, the Defendant has used that abusive terminology to the Plaintiff in the past and is the only person to have ever done so. Such insults and verbal abuse during the Plaintiff's and Defendant's marriage was the primary reason that Plaintiff chose to separate from the marriage. Plaintiff has no intention of tolerating such immature verbal abuse either in or out of marriage.

2. Pursuant to Rule 7(b) of North Carolina Rules of Civil Procedure Plaintiff hereby moves that this Court injoin

the Defendant from making harassing, insulting, or profane telephone calls to Plaintiff's telephone answer machine and injoin the Defendant from ever in any manner communicating, either directly or indirectly, insults or verbal abuse to the Plaintiff.

This, the 16 day of May, 1988.

s/ OLIVER CURTIS POWELL
Oliver Curtis Powell

(Sworn this 16 day of May, 1988.)

ORDER
(Filed 7-18-88)

Plaintiff alleges that Defendant has made harassing, obscene and insulting telephone calls to him and moves for an injunctive order to restrain Defendant from communicating an obscenities or insults to him, either directly or indirectly. Defendant, through her attorney, J. Edgar Moore denies making such telephone calls to the Plaintiff but

consents to the requested injunctive order.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that, henceforth, the Defendant shall not communicate any obscenities or insults to the Plaintiff, either directly or indirectly, and shall not make harassing telephone calls to the Plaintiff.

This cause is to be enforced as for contempt.

This the 18th day of July, 1988.

s/ ALLEN W. HARRELL
Judge Presiding

We consent to entry of this order.

s/ BETTY T. POWELL
Defendant

s/ J. EDGAR MOORE
Attorney for Defendant

MOTION FOR CHANGE OF VENUE
(Rule 7(b) N.C. Rules of Civil Proc.
NCGS 1-84, et. seq.)
(Filed May 19 11:47 AM 1988)

1. Pursuant to Rule 7(b) of North

Carolina Rules of Civil Procedure and North Carolina General Statute. Section 1-84. et. seq.. Plaintiff moves for a change of venue to an adjacent county in another Judicial District. The affidavit required by NCGS section 1-85 is incorporated herein:

2. AFFIDAVIT

I. Oliver Curtis Powell. being duly sworn says that:

I believe that this case can not be tried fairly and impartially before the judges of the 7th Judicial District. The Chief District Judge has manifested bias and prejudice against me in Nash County Civil Case 86CVD981. The other Judges of this district are subordinate to the Chief District Judge and I believe there is high probability that the Chief District Judge's bias will be manifested through them.

The Honorable Judge Albert S.

Thomas. whom I believe is the most fair judge in this district. has on his own volition disqualified himself from this case. If Judge Thomas can not make an unbiased decision in this case. I have serious doubt that any other judge in this district can.

THIS 19 day of May. 1988.

s/ OLIVER CURTIS POWELL
Oliver Curtis Powell

(Sworn this 19 day of May 1988.)

3. WHEREFORE. Plaintiff asks that the venue for this case be moved to an adjacent county.

THIS 19 day of May. 1988.

s/ OLIVER CURTIS POWELL
Oliver Curtis Powell

(Sworn this 19 day of May. 1988.)

ORDER (Denying Change of Venue)

THIS CAUSE being heard by the under signed Judge on motion of the plaintiff for a change of venue. and after hearing

the evidence the Coiurt is of the opinion that the motion should not be granted.

NOW. THEREFORE. IT IS ORDERED. ADJUDGED AND DECREED that motion to change the venue is denied.

EXCEPTION NO. 7

This the 18th day of July. 1988.

s/ ALLEN W. HARRELL
Judge Presiding

MOTION FOR SUMMARY JUDGMENT

Betty T. Ellison (Powell). the defendant. moves the Court pursuant to Rule 56 of the Rules of Civil Procedure for a summary judgement on the ground that there is no genuine issue of any material fact as shown by the pleadings. depositions. answers to interrogatories and admissions of fact. together with other documents attached hereto. and movant is entitled to judgement as a matter of law for the following reasons:

1. On November 25, 1987, the plaintiff and defendant entered into a consent order which operates as a full and complete settlement of any claims between them and accordingly any claim of the plaintiff against the defendant has been fully satisfied. See attached order that states that "all matters in controversy have been settled", said order being dated November 25, 1987.

2. In the complaint filed by the plaintiff, he alleges that the parties made an agreement on July 7, 1986, and May 1, 1987, and these agreements were prior to the time that the order was entered that settled all matters in controversy.

WHEREFORE, movant prays that the Court enter judgement in its favor together with the costs of this action.

This 3d day of August, 1988.

MOORE, DIEDRICK, CARLISLE & HESTER
By: s/ J. Edgar Moore

Attorney for Defendant

MEMORANDUM OF OBJECTION TO SUMMARY JUDGMENT
(Filed Aug 12 3:15 PM 1988)

Plaintiff objects to Summary Judgement on the grounds that this action violates Plaintiff's rights under the Constitution of North Carolina.

1. Article IV, Section 13 gives Plaintiff right to trial by jury as it reads: "THERE SHALL BE IN THIS STATE BUT ONE FORM OF ACTION FOR THE ENFORCEMENT OR PROTECTION OF PRIVATE RIGHTS OR THE REDRESS OF PRIVATE WRONGS, WHICH SHALL BE DENOMINATED A CIVIL ACTION, AND IN WHICH THERE SHALL BE A RIGHT TO HAVE ISSUES OF FACT TRIED BEFORE A JURY." (Underlined for emphasis.) Article I, Section 2 stipulates that no government agency or branch has any power except as originated from the people and Section 7 forbids any act by any authority, including this Court to suspend my rights under our Con-

stitution and Rule 38 of North Carolina Rules of Civil Procedure stipulates that my right to trial by jury " ... SHALL BE PRESERVED ... INVIOLATE." I have demanded trial by jury and if any issue of fact is determined except by jury. it shall be a violation of my N.C. Constitutional rights, and Amendment VII, U.S. Constitution.

2. The only issues before this Court are issues of fact; specifically:

(1) Did Plaintiff and Defendant enter into a valid and binding contract;

(2) Did each party meet his her obligations under the contract;

(3) Was the contract modified or cancelled in any way.

3. There was a valid and binding oral contract because:

(1) No illegal or unconscionable act was required by the contract;

(2) Both parties are of legal ages

and are competent:

(3) There was an offer and an acceptance:

(4) Both parties offered consideration.

4. The contract was not required to be in writing. by North Carolina law the only contracts that are required to be in writing are:

(1) Any contract for sale of personal goods of value $500 or more. (NCGS 25-2-201)

(2) Any contract with a Cherokee Indian involving a value of $10.00 or more. (NCGS Section 23-3)

(3) Any contract involving real estate. (NCGS Section 22-2)

(4) Any contract/promise to revive a bankruptcy debt. (NCGS Section 22-4)

(5) Any contract/agreement to answer for the debt of another. (NCGS Section 22-1)

5. The contract in controversy here does not fall within the terms of any statute to require it to be in writing. Plaintiff trusted the Defendant to have the person integrity to live by her word of honor; however, Plaintiff's trust has been grossly violated by the Defendant both here and in other dealing. Without honor and integrity the social structure of our society is a disaster. It is time that this woman was taught the meaning of honor and integrity.

6. The only other issue before this Court is one of fact as to whether the obligations of this contract were settled by performance of in controversy in Nash County Case 86 CVD981. Although the consent order of that case reads: "... ALL MATTERS IN CONTROVERSY HAD BEEN SETTLED ..." (underlined for emphasis). BLACK'S LAW DICTIONARY and WEBSTER'S DICTIONARY defines "CONTROVERSY" as a

claim of a litigant before a Court for adjudication. (EXHIBITS A AND B) None of the pleadings or claims filed in that case mentions the demand for payment for the washer and drier which are in controversy before this Court. (EXHIBITS C thru H) In fact Plaintiff's demand for payment and refusal by Defendant to pay did not occur until after that litigation was settled. THIS ISSUE WAS NOT IN CONTROVERSY IN NASH COUNTY CASE 86CVD981.

7. These are all matters of fact to be determined by this Court and I demand jury trial pursuant to my Constitutional right and pursuant to Rule 38 of the North Carolina Rules of Civil Procedure.

8. If the Presiding Judge desires to counsel the Defendant and her attorney and they agree to a consent order for settlement of Defendant's just and honorable debt and for Plaintiff's costs, this matter can be resolved today.

OTHERWISE. I TAKE EXCEPTION TO ANY RULING OF FACT BY THE PRESIDING JUDGE.

THIS, 10th day of August, 1988.

s/ OLIVER CURTIS POWELL
Oliver Curtis Powell, Pro Se

(Sworn this 10th day of August, 1988.)

ORDER GRANTING SUMMARY JUDGMENT
(Filed August 15, 1988.)

THIS CAUSE coming on to be heard before the undersigned Judge upon motion of the defendant for summary judgement.

and it appearing to the Court that there is no genuine issue as to any material

EXCEPTION NO. 17

fact and that the defendant is entitled to judgement as a matter of law.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that summary judgement is granted in favor of defendant against

EXCEPTION NO 18

plaintiff and this action is dismissed with the costs to be taxed against the plaintiff.

This 15th day of August, 1988.

s/ ALLEN W. HARRELL
Judge Presiding

PLAINTIFF'S NOTICE OF APPEAL
(Rule 3, NC Rules of Appel. Proc.)
(Filed August 22 2:26 PM 1988)

Pursuant to Rule 3, North Carolina Rules of Appellate Procedures and within the time allowed. Plaintiff hereby appeals the decisions of the District Court to the North Carolina Court of Appeals.

Plaintiff believes that the issue before this court was not in "controversy" in Nash County case 86CVD981 and that Plaintiff is entitled to compensation under the terms of the oral contract. Further, Plaintiff believes that CHANGE OF VENUE should have

been ordered and that he is entitled to TRIAL BY JURY as demanded.

THIS 22 day of August. 1988.

s/ OLIVER CURTIS POWELL
Oliver Curtis Powell
Plaintiff. Pro Se

APPEAL ENTRIES
(Filed Nov 7 11:35 AM 1988)

Plaintiff filed due notice of appeal to the North Carolina Court of Appeals within the time allowed. Appeal bond in the sum of $200.00 is adjudged to be sufficient. On motion of the Plaintiff. he is allowed 150 days from August 22. 1988. in which to serve proposed record on appeal. and defendant is allowed 60 days thereafter. within which to serve objections or a proposed alternative record on appeal.

THIS. the 10th day of October. 1988.

s/ ALLEN W. HARRELL
Judge Presiding

DECISION, N.C. COURT OF APPEALS
(Filed 7 November 1989)

Appeal by plaintiff from Harrell (Allen W.), Judge. Orders entered 18 July 1988 and 15 August 1988 in District Court, Edgecombe county. Heard in the Court of Appeals 19 September 1989.

EXCEPTION 23

Oliver Curtis Powell, pro se.

No brief filed for defendant-appellee.

ORR, Judge.

Plaintiff, who was previously married to defendant, filed a complaint which alleged the following facts. The parties entered into an arrangement whereby plaintiff purchased an automatic clothes washer and a clothes dryer from defendant for the sum of $200.00. The parties further agreed that if defendant wanted to repurchase these items at some

time in the future, plaintiff would sell them to her for the same price of $200.00.

On or about 1 May 1987, plaintiff agreed to sell the appliances back to defendant. Plaintiff delivered the items to defendant; however, defendant refused to pay for the same.

Plaintiff alleges that the appliances were initially purchased from defendant and resold to her under "as-is/where-is" agreement. He prays for the $200.00 purchase price with the appropriate amount of interest. He also requests punitive damages for defendant's alleged "attempt" to defraud him.

Defendant's answer neither admitted nor denied the existence of the sales contract. Instead, defendant moved to dismiss on two grounds. First, she alleged that plaintiff's complaint failed to state a legally cognizable claim for

which relief could be granted. Second, defendant alleged the existence of a consent order which serves as complete settlement of any claims between the parties. Defendant alleged that the consent order serves as a bar to plaintiff's recovery because it completely released her from any claims brought by plaintiff.

Thereafter, on 19 May 1988, plaintiff filed a motion for change of venue. The same was denied 18 July 1988. Defendant filed a motion for summary judgement on 3 August 1988. The court granted that motion on 15 August 1988. Plaintiff thereafter gave notice of appeal.

Plaintiff, acting on his own behalf, has raised several questions for our review. We have thoroughly reviewed all issues raised by him and we find only two are appropriate for our review.

The first issue which we shall address is whether the trial court erred

in denying plaintiff's motion for a change of venue. Plaintiff contends that the presiding judge could not have made an impartial decision as to his qualifications to hear his complaint. Therefore, the court should have granted his motion for a change of venue.

The statute entitled "Removal for fair trial" states:

> In all civil actions in the superior and district courts, when it is suggested on oath of affirmation on behalf of the plaintiff or defendant, that there are probable grounds to believe that a fair and impartial trial cannot be obtained in the county in which the action is pending, the judge may order a copy of the record of the action removed for trial to any adjacent county, if he is of the opinion that a fair trial cannot be had in said county, after hearing all the testimony offered on either side by oral evidence or affidavits.

G.S. 1-84 (1987). Motions made pursuant to this section are "addressed to the sound discretion of the trial judge. [F]acts must be stated particularly and in detail in the affidavit, or judicially

admitted, showing the grounds for such removal." Patrick v. Hurdle, 6 N.C. App. 51, 54, 169 S.E.2d 239, 241 (1969). Further, "the court must exercise that discretion in the light of the situation existing when the decision is made." Everett v. Town of Robersonville, 8 N.C. App. 219, 222-23, 174 S.E.2d 116, 188 (1970)

In the case at bar, plaintiff submitted an affidavit with his motion which stated in part that the Chief district Judge of the 7th Judicial District "ha[d] manifested bias and prejudice against [him] in [another case]." He further stated that he believed there was a high probability that the Chief Judge's bias would be manifested through the subordinate district judges. He stated that since Judge Thomas had disqualified himself due to his inability to make an unbiased decision, he "[seriously

doubted] that any other judge in this district ..." could make an unbiased decision.

In cases such as this one, "[w]here facts are set forth in the affidavit, their sufficiency rests in the discretion of the judge and his decision is final ...." Everett, at 223, 174 S.E.2d at 119. the record before us does not reflect an abuse of the trial court's discretionary authority; therefore, we shall not disturb its decison as to that question.

EXCEPTION 18

More importantly, plaintiff could have filed this action in Nash County where defendant resides. G.S. 1-82. Yet, he chose to file this action in his own county. That was a decision which plaintiff was entitled to make. Having made that decision, he has no right to challenge the court's denial of his

motion for a change of venue in the absence of a showing of any abuse.

EXCEPTION 19

The final issue which we shall address is whether the trial court erred in granting defendant's motion for summary judgment. Plaintiff argues that at the time the consent order was entered, there was no "justiciable dispute" between he and defendant over payment for the washer and drier. Consequently, the consent order could not have resolved the dispute which exists between the parties at this time. That being the case, the consent order is not a bar to this action and there is still a genuine question of material fact which has yet to be resolved.

Summary judgment is the devise whereby judgment is rendered "if the pleadings, depositions, interrogoatories and admissions on file, together with any

affidavits, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." Johnson v. Insurance, 300 N.C. 247, 252, 266 S.E.2d 385 (1988), reversed on other grounds, 323 N.C. 559, 374 S.E.2d 385 (1988).

In the case at bar, plaintiff alleged the existence of a contract for the sale of the washer and dryer and defendant did not deny the same. Both parties admit to the existence of a consent order. Therefore, the only question for the trial court involved the legal effect of that consent order on the parties" prior agreement.

According to Williston on Contracts,

> a judgment in an action on part of a continuing contract not only merges that right of action but may have the effect of conclusively fixing an interpretation of construction of the contract for all future disputes ... [if] the obligations [are] between the

same parties, and ... the same debt or claim. EXCEPTION 20

15 Williston, Contracts 3d. section 1875.

By his own admission, plaintiff alleges in his complaint that the terms of the agreement required payment for the appliances at the time of delivery.

EXCEPTION 21.

However, defendant tendered no payment at the time of delivery or at any other time prior to the entry of the consent judgment. therefore, the $200.00 payment was in controversy between the parties at the time the court entered its consent order.

EXCEPTION 21.

The court's order states that "all matters in controversy had been settled ...." Plaintiff had not produced any evidence which would compel us to conclude otherwise. Consequently, we find that entry of summary judgement by

the trial court was correct. The decison below is affirmed. EXCEPTION 22.

Affirmed.

Judges WELLS and JOHNSON concur.

Report per Rule 30(e).

NOTICE OF APPEAL
Filed Nov. 15, 10:25AM, 1990

Plaintiff/Appellant, Oliver Curtis Powell, hereby gives notice of appeal from the decision of the North Carolina Court of Appeals to the North Carolina Supreme Court.

The decision of the Honorable Court of Appeals is not consistent with the legal definition of "controversy" and does not consider that both Edgecombe County and Nash County are in the same judicial district and that both counties use the same judges.

THIS, the 14th day of November, 1989.

s/OLIVER CURTIS POWELL

DEFENDANT'S MOTION TO DISMISS

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA

Betty T. Ellison (Powell), defendant, herein moves to dismiss the appeal to the Supreme Court of North Carolina from the North Carolina Court of Appeals in that there is no merit in the appeal of the plaintiff.

Respectfully submitted this 11 day of December, 1989.

MOORE, DIEDRICK, CARLISLE & HESTER
s/ J. EDGAR MOORE

ORDER

Motion by Defendant to Dismiss Appeal for Lack of Merit has been filed and the following order entered:

"Allowed by order of the Court in conference this the 18th day of January 1990.

s/ WHICHARD, J.
For the Court

NOTICE OF APPEAL TO UNITED STATES COURT OF APPEALS
(Filed Jan 29, 1990)

Plaintiff/Appellant hereby gives notice of appeal from the decision of the North Carolina Supreme Court to the United States Court of Appeals for the Fourth Circuit. Order to dismiss was entered by North Carolina Supreme Court on 18 January 1990; however. Appellant did not receive notice of that decision until January 25, 1990. Appellant's BRIEF to North Carolina court of Appeals and NEW BRIEF to North Carolina Supreme Court are incorporated herein by

reference and basis of Appeal is:

1. Plaintiff/Appellant's civil right to DUE PROCESS as guaranteed by Amendment XIV. United States Constitution is violated in that Plaintiff/Appellant did not receive notice during litigation of Nash County Case 86CVD981 that the debt litigated in this case was at issue in that case. (Rp 19 et. seq. Exhibits C thru H).

2. North Carolina Court of Appeals and North Carolina Supreme Court did not review and consider all issues presented by Plaintiff/Appellant in appeal briefs.

3. Both North Carolina appellate Courts misinterpretted or misapplied Williston's Treatise on contracts. If the North Carolina appellate Courts' improper application of 15 Williston, Contracts 3d, Section 1875 is allowed to stand, this will create a precedence which might be used as case law. This could result

in an injustice to future litigants.

4. In deciding (or refusing to decide) this case North Carolina Courts have ignored the legal definitions of "Controversy" as is defined in all dictionaries and in North Carolina Supreme Court case Finney v. Corbet (193 NC 315) See Plaintiff/Appellant's BRIEF, Appendix C.

5. North Carolina trial court and appellate courts have violated Plaintiff/Appellant's civil right of "EQUAL PROTECTION OF THE LAW" as is guaranteed by Amendment XIV, United States Constitution. Specifically, the North Carolina Courts did not give the same consideration to Appellant's evidence and arguments that it would have given if a licensed attorney had presented the case in exactly the same manner.

6. North Carolina courts ignored the fact that Defendant stated on or about

December 1. 1987 that she would pay this just debt. That declaration, which she made to Plaintiff approximately one week after the consent order which she claims relieved her of the debt, renewed her obligation to pay this just debt. (Tp 9B)

7. North Carolina appellate courts incorrectly found that the oral contract between the litigants required payment immediately upon delivery of the appliances.

8. North Carolina appellate courts ignored the fact that both the Plaintiff's resident county and the Defendant's resident county are both in the same Judicial District and that the same judges are judiciary in both counties. Change of venue to an adjacent county outside the 7th Judicial District should have been allowed.

9. Plaintiff was denied his civil right

to trial by jury as is guaranteed by Amendment VII, United States Constitution.

10. The North Carolina appellate courts did not consider all issues raised on appeal.

11. North Carolina trial courts allowed Appellee's attorney to manipulate the court schedule to get their cases scheduled or continued in such a way that their cases were heard by judges whom the attorney knew would give the decisions he wanted without regard to justice. North Carolina Courts should assign each case to a randomly selected judge on a first-come or lottery basis. The assigned judge should remain with each case through all litigation unless good cause is shown for reassignment.

12. North Carolina judicial system makes it unfairly difficult for the middle class litigant to obtain justice.

Specifically, the system is biased in favor of the wealthy and paupers. Those litigants who are wealthy enough to afford an expensive attorney and the exhorbitant court costs are favored to win cases.

The court costs for paupers are waived and trainee lawyers accept their cases with little or no fee. North Carolina judges are attorneys and stand to return to law practice; therefore, they are biased against pro se litigations. This violates Plaintiff's civil right to EQUAL PROTECTION OF THE LAW as is guaranteed by Amendment XIV, United States Constitution.

13. North Carolina courts unjustly found that "there is no genuine issue as to material fact" (Rp 11) and improperly dismissed the case.

14. North Carolina court of Appeals violated Appellant's Constitutional civil

right to EQUAL PROTECTION OF THE LAW by ignoring the citations and arguments of Plaintiff/Appellant's brief and by conducting biased research to find "justification" to support the position of Defendant/Appellee's attorney even though appellee's attorney did not file a brief, did not argue nor give a citation.

NOTICE OF APPEAL given, this 29 day of January, 1990.

s/OLIVER CURTIS POWELL
Oliver Curtis Powell, Pro Se

MOTION TO AMEND
NOTICE OF APPEAL TO UNITED STATES
(Filed Feb 4, 1990)

On January 29, 1990 Plaintiff/ Appellant filed notice of Appeal in the Supreme Court of North Carolina to appeal the decision of the North Carolina Supreme Court to the United States Court of Appeals for the Fourth Circuit. Plaintiff hereby amends the Notice of

Appeal to appeal the decison to the United States Supreme Court. Petition for Writ of Certiorari will be filed pursuant to U.S. Supreme Court Rules. 28 U.S.C.A.

Notice of appeal is filed in North Carolina Supreme Court pursuant to U .S. Supreme Court Rule 10.3. 28 U.S.C.A.

THIS 4 day of February. 1990.

s/ OLIVER CURTIS POWELL
Oliver Curtis Powell. Pro Se

MOTION TO EXTEND TIME IN WHICH TO FILE FOR WRIT OF CERTIORARI
(Filed 23 March 1990)

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Plaintiff/Appellant comes pursuant to 28 U.S.C. Section 2101(c) and asks that the time in which he may petition for a Writ of Certiorari be extended an additional 60 days and that he be allowed until June 18, 1990 to petition the Honorable Supreme Court of the United

States for a Writ of Certiorari.

Plaintiff, proceeding Pro Se, filed Complaint in U.S. District Court, District 7, Edgecombe County, North Carolina on January 4, 1988 to recover a debt; however the case was dismissed August 15, 1988, the Court stating: "that there is no genuinme issue as to any material fact ...." On August 22, 1988 Plaintiff appealed to the North Carolina Court of Appeals where a decision adverse to Plaintiff was rendered on November 7, 1989. On November 15, 1989 Plaintiff appealed to the Supreme Court of North Carolina but upon motion of Defendant/Appellee, the appeal was dismissed on January 18, 1990 "for lack of merit."

Plaintiff/Appellant, proceeding Pro Se, requires additional time in which to study the record, research the issues, and review the administrative procedures

required.

Respectfully submitted this 23 day of March, 1990.

s/ OLIVER CURTIS POWELL
Oliver Curtis Powell, Pro Se

ORDER TO EXTEND TIME TO FILE FOR WRIT OF CERTIORARI NO. A-698
(Filed 10th Day of April, 1990.)

UPON CONSIDERATION of the application of counsel for the petitioner,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including May 18, 1990.

s/ WILLIAM H. REHNQUIST
Chief Justice of the United States